REP
VICTORIA GIAMPA
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Defendant/Counterclaimant In Pro Se

DISTRICT COURT – FAMILY DIVISION
CLARK COUNTY, NEVADA

VICTORIA GIAMPA,	)	**FILED**
	)	**December 5, 2005**
Plaintiff/Counterdefendant,	)	Case No: 98-D224029
	)	Dept No: B
vs.	)	Honorable Judge
	)	Gloria B. Sanchez
	)	
CHARLES GIAMPA,	)	Hearing Date:
	)	December 6, 2005
	)	Hearing Time: 12:00p.m.
Defendant/Counterclaimant.	)	
	)	

DEFENDANT'S REPLY TO PLAINTIFF'S OPPOSITION TO DEFENDANT'S MOTION TO SET ASIDE TEMPORARY ORDER FOR CHANGE OF PHYSICAL CUSTODY PURSUANT TO NRCP 60(b) AND COUNTERMOTION FOR ORDER TO SHOWE CAUSE WHY DEFENDANT SHOULD NOT BE HELD IN CONTEMPT OF COURT; COUNTERMOTION FOR PERMANENT ORDERS RE: CUSTODY; COUNTERMOTION FOR ATTORNEY FEES AND SANCTIONS

COMES NOW, DEFENDANT/COUNTERCLAIMANT, VICTORIA GIAMPA (hereinafter DEFENDANT VICTORIA), In Pro Se, who hereby replies to PLAINTIFF GIAMPA'S OPPOSITION TO DEFENDANT'S MOTIION TO SET ASIDE TEMPORARY ORDER FOR CHANGE OF PHYSICAL CUSTODY PURSUANT TO NRCP 60(b) AND COUNTERMOTION FOR ORDER TO SHOW CAUSE WHY DEFENDANT SHOULD NOT BE HELD IN CONTEMPT OF COURT; COUNTERMOTIION FOR PERMANENT ORDERS RE: CUSTODY; COUNTERMOTION FOR ATTORNEY FEES AND SANCTIOINS.

This Reply is made based upon the court record in this case, the points and authorities contained herein and upon oral argument between the parties and counsel of record adduced at hearing.

DATED this 5th day of DECEMBER, 2005.

By: VICTORIA GIAMPA
1848 Wellington Ct.
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(702) 434-9027
Defendant In Pro Se

FACTUAL AND LEGAL ARGUMENT
(Points and Authorities)

1. On August 25, 2005, PLAINTIFF GIAMPA and DEFENDANT VICTORIA speared before this Honorable Family Court for an evidentiary hearing on PLAINTIFF GIAMPA'S Motion to Modify Custody regarding the parties' minor son, Mark (age 16).

2. PLAINTIFF GIAMPA had filed a request to modify custody of the parties' daughter, Sarah, despite the fact that she will be 18 years old on December 11th.

3. The August 2005 evidentiary hearing was continued to January 19, 2006.

4. As a result of the apparent unavailability of Dr. Lawrence Lyons, the Court appointed Dr. Louis Mortillaro to conduct the evaluation because Dr. Mortillaro had appeared on each party's "approved" list of custody evaluators in prior proceedings.

At this point DEFENDANT VICTORIA responds to PLAINTIFF GIAMPA'S statements by use of the allegation/response format as follows:

PLAINTIFF'S ALLEGATION NO. 1:

6. The Court ordered that the evaluation be completed by November 30, 2005. In compliance with the Court's directives, Chuck presented himself for the evaluation and has completed his portion of the evaluation testing. It is Chuck's understanding that Victoria has failed to complete her personal evaluation.

DEFENDANT VICTORIA'S RESPONSE NO. 1:

7. DEFENDANT VICTORIA challenges this allegation because she has completed all testing requirements made by Dr. Mortillaro. The parties are simply waiting for Dr. Mortillaro to submit his written report to the court.

PLAINTIFF'S ALLEGATION NO. 2:

8. The children have resided primarily with Chuck for several months. The children have made it adamantly clear to Chuck, Victoria, and to Dr. Mortillaro, that they have no desire to reside primarily with Victoria.
Victoria clearly is aware of this fact and reality.

DEFENDANT VICTORIA'S RESPONSE NO. 2:

9. DEFENDANT VICTORIA challenges this false allegation made by PLAINTIFF GIAMPA because the parties' minor children have not primarily resided with PLAINTIFF GIAMPA. The true facts are that the parties' minor children do not reside with either parent but instead maintain and reside at a separate third residence.

10. DEFENDANT VICTORIA would contend that of course, teenagers don't want rules. Is that a reason to give minor children too much freedom to soon, which has already been misused by SARAH and MARCO evidenced by them ditching school? They're able to ditch school because they are not supervised. The Court should not reward their bad behavior. SARAH and MARCO have never been entitled to this much freedom based on their past history, which is why DEFENDANT VICTORIA imposed the rules she imposed in the first place and which is why PLAINTIFF GIAMPA'S tactics in keeping up the deception that the children are living with him should not be rewarded.

11. In addition, PLAINTIFF GIAMPA assists in managing the children's defiance towards DEFENDANT VICTORIA'S rules and responsibilities which serves the purpose of maintaining the children's dependence on PLAINTIFF GIAMPA. PLAINTIFF GIAMPA fuels the miscommunications between the children and their mother which in turns yields various forms of interference from PLAINTIFF GIAMPA with visitation and undermining of respect for DEFENDANT VICTORIA. PLAINTIFF GIAMPA does not appreciate the value and need for visitation with their mother and works against any visitation. PLAINTIFF GIAMPA is obsessed with his antagonism towards DEFENDANT VICTORIA with clear and consistent derogation of her which involves a combination of brainwashing and hostility that begins with PLAINTIFF GIAMPA and is taken on by SARAH and MARCO. PLAINTIFF GIAMPA has disrupted the emotional bond between DEFENDANT VICTORIA and their children which is causing a complete estrangement between her and their children.

12. DEFENDANT VICTORIA contends that the arrangement violates NRS 125.480, which is to ensure that minor children have frequent associations and a continuing relationship with both parents after the parents have become separated or have dissolved their marriage and to encourage the parents to share the rights and responsibilities of child rearing. DEFENDANT VICTORIA further contends that custody litigants have the right to a full and fair hearing and no change of custody can be made until changed circumstances are shown by factual evidence, Moser v. Moser, 108 Nev. 572, 836 P.2d 63 (1992).

13. PLAINTIFF GIAMPA has simply 'bought' the children with money, cars, 'crib,' freedom, no curfews, no responsibilities, no responsibilities to SARAH'S Girl Scout Gold Award Project, nor MARCO'S Boy Scout Merit Badge Project. SARAH and MARCO collude with PLAINTIFF GIAMPA in deception and lies simply to keep secrets from their mother and to express their allegiance to their father.

PLAINTIFF'S ALLEGATION NO. 3:

14. With respect to the other incident referenced in Victoria's Motion, it is Chuck's understanding that Victoria contacted the police department and reported that young children had been left alone. Victoria made it appear to the police department that the children left alone were incapable of caring for themselves.

DEFENDANT VICTORIA'S RESPONSE NO. 3:

15. DEFENDANT VICTORIA challenges this allegation because on at least (2) two occasions she directed the Las Vegas Metropolitan Police Department to conduct a well-check upon the parties' minor children when she discovered that PLAINTIFF GIAMPA traveled out of the country from the care and custody of the parties' minor children for more than (3) three hours or completely removed from the jurisdiction pursuant to the Court's Order of August 25, 2005. DEFENDANT VICTORIA argues that this type of conduct violates Court Order(s) made in the best interest of the parties minor children. [EXHIBIT 7] To Wit:

November 16, 2005 3:12 A.M.

LAS VEGAS METROPOLITAN POLICE DEPARTMENT

"ATTEMPTED DOOR KNCK AND WINDOW, KNOCK AT APT. 410, AT COUNTRY CLUB TOWERS, WERE UNABLE TO MAKE CONTACT. MOTHER CONCERNED KIDS LEFT ALONE, HAS COURT ORDER THAT KIDS CAN'T BE LEFT ALONE, UNKNOWN IF APARTMENT IS OCCUPIED."

16. PLAINTIFF GIAMPA defeated the Court's custody Order by failing to supervise the children as evidenced by the police report. They were either not home at 3:30 in the morning or were perpetuating PLAINTIFF GIAMPA'S deceit and lies by not answering the door. Either scenario would suggest they were alone and unsupervised. SARAH and MARCO have learned how easy society can be manipulated and how worthless values are, and they don't care about authority because authority has been manipulated by PLAINTIFF GIAMPA and his attorney.

17. DEFENDANT VICTORIS further contends that the burden on the party seeking modification is identical to that used by a court at an initial custody determination, i.e., proving by a preponderance of the evidence that the best interest of the child would be best served by granting the requesting party primary or sole physical custody. Truax v. Truax, 110 Nev. 437, 874 P.2d 10 (1994); Duff v. Foster, 110 Nev. 1306, 885 P.2d 859 (1994). The Nevada Supreme Court addressed this issue in Mosley v. Figliuzzi, 113 Nev.

51, 930 P.2d 1110 (1997). The Court stated that in cases where a party is seeking to modify a joint custody arrangement, some change in circumstances must have occurred sinc [sic.] thc entry of the most recent order, especially where the last order is fairly new, based on principles or res judicata which preclude a party from re-litigating an issue previously resolved by the court.

PLAINTIFF'S ALLEGATION NO. 4.:

18. When Chuck has been required to be out of town and unable to carc for the children during a weekend, he has instructed the children to stay with Victoria.

DEFENDANT VICTORIA'S RESPONSE NO. 4:

19. DEFENDANT VICTORIA challenges this allegation because it is unsound and foolish. PLAINTIFF GIAMPA contends that it is okay for him t get on a plane and leave the jurisdiction at any time while ostensibly telling the parties' minor children that they are to make contact with DEFENDANT VICTORIA to seek care and supervision. This statement disregards evidence that the parties' minor children have been left alone and unsupervised by PLAINTIFF GIAMPA to engage in the consumption of alcoholic beverages at a separatc and third residence that PLAINTIFF GIAMPA has undertaken to arrange for the parties' minor children. DEFENDANT VICTORIA relies in part on NRS 125a290(10)(a) which provides:

> Any other awarding a party a right of visitation of a minor child must:
> (a) Define that right with sufficient particularity to ensure that the rights of the parties can be properly enforced and that the best interest of the child is

achieved. Matters of custody and support of minor children rest in the sound discretion of the trial court. Culbertson v. Culbertson, 91 Nev. 230, 233, 533 P.2d 768, 770 (1975). A court decision regarding visitation is a "custody determination." NRS 125A.040(2). It is presumed that a trial court has properly exercised its discretion in determining a child's best interest. Culbertson, 91 Nev. at 233, 533 P.2d at 770.

20. Apparently this Honorable Family Court overlooked the fact that PLAINTIFF GIAMPA would be making so many out of the country trips while leaving the parties' minor children alone and unsupervised placing the minor children at various types of serious risks. DEFENDANT VICTORIA further contends that PLAINTIFF GIAMPA admits that he only encourages the parties' minor children to spend time with her when he is out of town and unavailable. NRS 125.480(3) requires that the family court, in custody matters, consider "which parent is more likely to allow the child to have frequent associations and a continuing relationship with the noncustodial parent. The father appears to be trying to avoid, at any cost, any continuing relationship with the children's mother. The intention of NRS 125.480 is to reward cooperative behavior by a parent and to punish the kind of behavior engaged in by this father, Prost v. Greene, 675 A.2d 471 (D.C.App. 1996).

PLAINTIFF'S ALLEGATION NO. 5.:

21. It is Chuck's understanding that Dr. Mortillaro has found that the children are not routinely unsupervised as Victoria falsely alleges.

DEFENDANT VICTORIA'S RESPONSE NO. 5:

22. DEFENDANT VICTORIA challenges this false allegation made by PLAINTIFF GIAMPA because she has submitted copies of the written police reports from the Las Vegas Metropolitan Police Department where it is indicated that the parties' minor children have been left alone and unsupervised in the separate and third residence he has arranged.

PLAINTIFF'S ALLEGATION NO. 6:

23. Although Chuck recognizes that such a request may be viewed as extraordinary, he respectfully submits that under the circumstances, such relief is appropriate where the evidence is clear and unequivocal.

DEFENDANT VICTORIA'S RESPONSE NO. 6.:

24. DEFENDANT VICTORIA challenges this allegation because "once primary custody has been established, a court can consider changing custody only if (1) the circumstances of the parents have been materially altered; and (2) the child's welfare would be substantially enhanced by the change." McMonigle v. McMonigle, 110 Nev. 1407, 887 P.2d 742, 743 (1994) (emphasis added) (quoting Murphy, 84 Nev. at 711, 447 P.2d at 665). A district court's determination of custody will not be disturbed unless there has been a clear abuse of discretion, Primm v. Lopes, 109 Nev. 502, 504, 853 P.2d 103, 104 (1993). However, this court must also be satisfied that the district court's determination was made for the appropriate reasons. Sims v. Sims, 109 Nev. 1146, 1148, 865 P.2d 328, 330 (1993).

PLAINTIFF'S ALLEGATION NO. 7:

25. Chuck should be reimbursed for every dollar incurred with respect to the custody evaluation. Moreover, Chuck respectfully requests the imposition of additional sanctions and fees for Victoria's litigiousness.

DEFENDANT VICTORIA'S RESPONSE NO. 7:

26. DEFENDANT VICTORIA challenges this allegation because she simply moves in these proceeding in the best interest of the parties' minor children. PLAINTIFF GIAMPA knew that he makes frequent out of town trips when he sought a change in physical custody but did not disclose such material fact to this Honorable Family Court. Accordingly, DEFENDANT VICTORIA seeks equitable relief from this court t set aside its order for a temporary change of physical custody. "In order to set aside a judgment or order because of fraud upon the court under Rule 60(b)...it is necessary to show an unconscionable plan or scheme which is designed to improperly influence the court in its decision" England v. Doyle, supra 281 F.2d at 309. See also United States v. Standard Oil Co. of California, 73 F.R.D. 612, 615 (N.D.Cal.1997). The motion to set aside on this ground is addressed to the sound discretion of the trial court. Title v. United States, 263 F.2d 28 (9th Cir.1959); Siberell v. United States, 268 F.2d 61 (9th Cir. 1959), and the burden on the moving party to establish fraud by clear and convincing evidence, Atchison, Topeka & Santa Fe Railway Co. v. Barrett, 246 F.2d 846 (9th Cir. 1957). England v. Doyle, 281 F.2d 304, 309-310 (9th Cir.1960). DEFENDANT VICTORIA contends that under these attendant facts and circumstances PLAINTIFF GIAMPA is not entitled to attorney fees nor the imposition of sanctions.

CONCLUSION

Based upon this Factual and Legal Argument, DEFENDANT VICTORIA believes that she has demonstrated by clear and convincing evidence that PLAINTIFF GIAMPA should be summarily denied any affirmative relief fro this Honorable Family Court.